

EMERGENCYSee instructions on
reverse)

For use by Secretary of State only

D. 400 (REV. 01-09)

OAL FILE
NUMBERS

NOTICE FILE NUMBER

Z-

REGULATORY ACTION NUMBER

EMERGENCY NUMBER

2010-0722-01E

For use by Office of Administrative Law (OAL) only

2010 JUL 22 AM 10:46
OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

DEPARTMENT OF CHILD SUPPORT SERVICES

AGENCY FILE NUMBER (If any)

PUBLICATION OF NOTICE (Complete for publication in Notice Register)

SUBJECT OF NOTICE

TITLE(S)

FIRST SECTION AFFECTED

2. REQUESTED PUBLICATION DATE

NOTICE TYPE

☐ Notice re Proposed☐ Regulatory Action ☐ Other

4. AGENCY CONTACT PERSON

TELEPHONE NUMBER

FAX NUMBER (Optional)

OAL USE
ONLY

ACTION ON PROPOSED NOTICE

☐ Approved as
Submitted☐ Approved as
Modified☐ Disapproved/
Withdrawn

NOTICE REGISTER NUMBER

PUBLICATION DATE

SUBMISSION OF REGULATIONS (Complete when submitting regulations)

SUBJECT OF REGULATION(S)

Recovery of Overpayments

1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)

None

SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)

SECTION(S) AFFECTED
(List all section number(s)
individually. Attach
additional sheet if needed.)

ADOPT

119900

AMEND

TITLE(S)

22

REPEAL

TYPE OF FILING

☐ Regular Rulemaking (Gov.
Code §11346)☐ Resubmittal of disapproved or
withdrawn nonemergency
filing (Gov. Code §§11349.3,
11349.4)☒ Emergency (Gov. Code,
§11346.1(b))☐ Certificate of Compliance: The agency officer named
below certifies that this agency complied with the
provisions of Gov. Code §§11346.2-11347.3 either
before the emergency regulation was adopted or
within the time period required by statute.☐ Resubmittal of disapproved or withdrawn
emergency filing (Gov. Code, §11346.1)☐ Emergency Readopt (Gov.
Code, §11346.1(h))☐ File & Print☐ Other (Specify) _____☐ Changes Without Regulatory
Effect (Cal. Code Regs., title
1, §100)☐ Print Only

ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

/A

EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)

☐ Effective 30th day after
filing with Secretary of State☒ Effective on filing with
Secretary of State☐ §100 Changes Without
Regulatory Effect☐ Effective
other (Specify) _____

CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY

☐ Department of Finance (Form STD. 399) (SAM §6660)☐ Fair Political Practices Commission☐ State Fire Marshal☐ Other (Specify) _____

CONTACT PERSON

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**I certify that the attached copy of the regulation(s) is a true and correct copy
of the regulation(s) identified on this form, that the information specified on this form
is true and correct, and that I am the head of the agency taking this action,
or a designee of the head of the agency, and am authorized to make this certification.**

SIGNATURE OF AGENCY HEAD OR DESIGNEE

DATE

6-17-10

PRINTED NAME AND TITLE OF SIGNATORY

Lucila Ledesma, Director

For use by Office of Administrative Law (OAL) only

- (1) Adopt Title 22, Division 13, Chapter 9, Article 10, Section 119900 to read as follows:

California Code of Regulations

Title 22. Social Services

Division 13. Department of Child Support Services

Chapter 9. Collection and Distribution of Child Support

Article 10. Recovery of Overpayments

Section 119900. Recovery of Overpayments to Payees

(a) The department shall offset child support collections to recover overpayments to payees resulting from, but not limited to, the following causes:

- (1) Payments by dishonored check,
- (2) Payments by unfunded electronic payments,
- (3) Department financial adjustments due to the reversal of a government entity intercept, or

- (4) Payments disbursed to the wrong payee.

(b) Prior to any offset described in subsection (a), the department shall send the sequence of three collection letters required pursuant to State Administrative Manual section 8776.6 which provide repayment or offset options to the payee. Each collection letter shall in increasingly urgent language offer the payee the following three repayment options:

- (1) Make immediate full payment without waiting for any offsetting, or

(2) Have the overpayment offset from subsequent collections at a rate of twenty-five percent (25%) of each collection, beginning with the very next collection, or

(3) Have the overpayment offset from subsequent collections at a rate of one hundred percent (100%) of each collection, beginning with the very next collection.

(c) In the event that the payee does not reply to any of the collection letters, the payee shall be deemed to have consented to recovery of the overpayment by offset at a rate of fifty percent (50%) of each subsequent child support collection until the overpayment is fully recovered.

AUTHORITY: Family Code sections 17306, 17310 and 17312.

REFERENCE: Family Code sections 17309, 17310(a), 17311(b)(1), and 17312(a); Government Code sections 16580 - 16586; 42 United States Code, sections 654(27) and 654b; State Administrative Manual Section 8776.6; Wightman et. al. v. FTB (1988) 202 Cal. App. 3d 966, at 979.

CALIFORNIA DEPARTMENT OF CHILD SUPPORT SERVICES
EMERGENCY RULEMAKING
R-50-10
Recovery of Overpayments

REVISED
FINDING OF EMERGENCY

INFORMATIVE DIGEST:

Background:

The California Department of Child Support Services (DCSS) was established on January 1, 2000. DCSS exists to establish and enforce child support collections and distributions. To carry out these activities, Family Code section 17308 required the DCSS Director to implement a single statewide automated child support system. That system is known as California Child Support Automation System (CCSAS).

Family Code section 17311 established the Child Support Payment Trust Fund in the State Treasury to be administered by the California Department of Child Support Services. All child support payments are required to be paid to the State and processed through this fund for disbursement to payees.

Family Code section 17309 requires DCSS to comply with the following federal requirements by establishing a State Disbursement Unit (SDU). Federal statute at 42 United States Code (U.S.C.) section 654(27) requires each state to establish a SDU for centrally processing child support payments from the entire state. Federal statute 42 U.S.C. section 654b details the procedural and processing timeframe requirements for the SDU. This federal statute requires the SDU to disburse a collection within 2 business days of its receipt.

Formerly, each local child support agency (LCSA) collected and disbursed child support payments. Collection of overpayment receivables was the responsibility of the LCSAs or their respective auditor controllers. The two legacy child support automated systems to which all counties were transitioned for ultimate transition on to CCSAS were the Automated Child Support Enforcement System Replacement System (ARS) and the California Automated Support Enforcement System (CASES). Their designs included aggressive recovery policies. ARS offered individuals a repayment option, but if the payee did not elect, ARS collected 100% from the next collection. In CASES, no recovery option was offered. LCSAs recovered up to 100% from the next collection.

As each LCSA transitioned from its legacy case management system to the CCSAS system, its overpayments receivables balance was transitioned to the State. As of March of this year, total overpayment receivables were valued at

\$15,863,500. The receivables were comprised of 43,625 overpayments to 27,380 individuals. The receivables averaged \$365 per overpayment. The trend of overpayment receivables is increasing dramatically. During the first 15 months after complete transition from legacy child support systems to CCSAS, overpayment receivables rose from \$12.2 million to \$15.9 million.

Problem:

The federally required 2 business days for the SDU to disburse a collection, is insufficient time for verification of the validity of the payment instrument by which each collection is received. Many checks are dishonored, electronic transfers unfunded, etc. When this occurs, state funds are disbursed and often the insufficient funds cannot be recovered directly from the payor and must be recovered from the payee. Overpayments can also occur when a disbursement is misdirected to the wrong payee because of a processing error. Other overpayments are the result of the reversal of government entity intercepts. This occurs when a new spouse makes a claim to the government entity that his or her community property share of the intercept must be refunded. If the government entity grants the claim and reverses one half of the intercept, but the full intercept collection has already been disbursed to the payee, the reversal creates an overpayment to the payee.

These overpayments to child support payee are administrative errors. The pseudo "payment" received by the SDU from the child support obligor is invalid. The money that goes to the payee is actually government funds. The Child Support Payment Trust Fund is being seriously impacted by these overpayments. It is necessary to establish in CCSAS an aggressive uniform process for recovery of these overpayments to safeguard government funds and the liquidity of the Child Support Payment Trust Fund.

Previous action to address problem:

The current recovery policy designed into the CCSAS is the primary cause of the increasing trend of uncollected receivables. Under that policy, individuals that receive overpayments are notified and offered options for repayment. One of the options offered allows the individual to decline to pay until the final collection is made on the child support case. Unfortunately, this choice is not only the most attractive option, but often prevents any recovery on the receivable when this option is selected. For example, when a payee closes his or her case before the child support obligation is fully satisfied the department can't predict when the final collection will occur from which to recover the overpayment. Even if a receivable is recovered from the final collection, the value of the recovery can be drastically reduced. Interest is not charged on receivables and when recovery occurs many years after the overpayment, the cash value of the recovery is diminished by the time value of money. Neither the volume of invalid payments nor their dollar value were anticipated at the time this policy was adopted. These factors seem to have been significantly aggravated by the economic downturn.

Study:

As of November 2008, all local child support agencies (LCSAs) had transitioned to the California Child Support Automation System (CCSAS). After that point, all receivables followed the state receivables policy, including the default policy which allowed IV-D customers to repay their outstanding receivables balances with the last payment on their case. DCSS Accounting recognized the high rate of growth in the aggregate dollar value of receivables after analysis conducted in July 2009. Between July 2009 to June 2010, the DCSS conducted a multidisciplinary workgroup consisting of departmental subject matter experts, received input from LCSAs and obtained policy decisions from executive management on a new receivables policy to prevent the insolvency of the Child Support Payment Trust Fund and the continued growth of receivables balances. During this time, DCSS also developed business requirements and worked with the CCSAS vendor to develop system changes to implement the new policy in the system.

Emergency:

The balance of the receivables is increasing at about \$229,620.00 per month. This rate of increase was not evident until all the accounts were transitioned into CCSAS. Since there had never before been a single processing center, neither the escalating rate of increase in receivables nor their fiscal magnitude could have been foreseen. The DCSS simply had no experience with the situation.

It is the sharp upward trend in the overpayment receivables that makes it imperative that this regulation package be adopted as an emergency regulation. It threatens the solvency of the Child Support Payment Trust Fund. The preservation of the solvency of the fund is an emergency because its insolvency could prevent the DCSS from disbursing child support payments to the millions of California children who depend on child support for basic necessities.

This regulation package is also urgently needed to manage the overpayments process and bring it into compliance with the State Administrative Manual Section 8776.6 Nonemployee Accounts Receivable requirements to send to the payee that received the overpayment three notices over a 90 day period prior to offsetting overpayment amounts against child support collections. Before transitioning onto CCSAS, uniformity in this function was not supported by the different computer systems.

CCSAS development has now advanced to the point that this new overpayment recovery process of automatically issuing the three letters and then making the offsets from subsequent collections has been programmed into the CCSAS system with an expected activation date in August 2010. This is another reason for this rulemaking to proceed as an emergency at this time. It is necessary to coordinate the policy with the system capabilities.

DISCUSSION BY PROVISION:

This rulemaking is for the purpose of defining an aggressive uniform overpayment recovery program which both: a.) provides adequate notice of planned offsets to recover overpayments on an account, and b.) offers overpaid payees three options from which to choose in making repayment arrangements. This is necessary to balance concerns of fiscal responsibility in administering public funds against concern for the financial impact of a policy change on the children who depend on child support for basic needs.

Section 119900 is proposed to be adopted to define a new uniform departmental overpayments recovery policy.

Subsection (a) identifies the causes of overpayments for which the department will be establishing offsets to recover overpayments. We have identified the most frequent causes of overpayments, but unforeseen different circumstances could also arise.

Subsection (b) describes the notification process that will be instituted before any offsets are made. The definition of these steps in the process is necessary to provide uniformity in handling of cases statewide. The process involves the issuance of three notices, each thirty days apart, over a ninety day period. Each notice to offer to the overpaid payee in increasingly urgent language, the options to pay in full immediately, agree to an offset rate of 25% of upcoming collections, or agree to an offset rate of 100% of upcoming collections. This process is consistent with the latest programming in the CCSAS system with an expected activation date in August 2010.

Subsection (c) describes how overpayments to unresponsive payees will be processed.

AUTHORITY AND REFERENCE CITATIONS:

Authority: Family Code sections 17306, 17310 and 17312.

Reference: Family Code sections 17309, 17310(a), 17311(b)(1), and 17312(a); Government Code sections 16580 -16586; 42 United States Code, sections 654(27) and 654b; State Administrative Manual Section 8776.6; Wightman et. al. v. FTB (1988) 202 Cal. App. 3d 966, at 979.

LOCAL MANDATE:

The Department has determined that the regulations may impose a mandate on local child support agencies, but not on school districts. The costs to local child

support agencies are negligible as the state's computer system will handle most of the processing automatically. Local agencies costs are fully funded through:

1. Federal incentives and subventions to local child support agencies under the provisions of 42 United States Code, Section 658(a) and 45 Code of Federal Regulations, Section 304.
2. State incentives and subventions to local child support agencies under the provisions of Family Code, Sections 17700(c) and 17704(b)(2)(B)(i).

FISCAL IMPACTS:

- A. Fiscal Effect on Local Government: Negligible and included in annual federal and state incentives and subventions to local child support agencies.
- B. Cost or Savings to Any State Agency: Administrative costs are negligible and absorbable in existing budget of Department of Child Support Services. Anticipated savings in state funds recovered are expected to be an unknown but significant portion of the monthly overpayments.
- C. Cost or Savings in Federal Funding to the State: None.
- D. Other Nondiscretionary Costs or Savings Imposed on Local Agencies: None.